

**CITY AND COUNTY OF HONOLULU
DEPARTMENT OF ENVIRONMENTAL SERVICES**

**REGULATORY CONTROL BRANCH
PRETREATMENT PROGRAM**

**FINAL REVISED
ENFORCEMENT RESPONSE PLAN**

June 15, 2020

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LIST OF FREQUENTLY USED ABBREVIATIONS

CFR	Code of Federal Regulations
ENV	Department of Environmental Services
ERP	Enforcement Response Plan
ET	Environmental Technician
IU	Industrial User
IWDP	Industrial Wastewater Discharge Permit
LOW	Letter of Warning
NOV	Notice of Violation
NOO	Notice of Order
POTW	Publicly Owned Treatment Works
RCB	Regulatory Control Branch
ROH	Revised Ordinances of Honolulu
SNC	Significant Noncompliance
WDN	Wastewater Discharge Notice

LIST OF DEFINITIONS

"40 CFR" refers to Title 40 of the Code of Federal Regulations relating to the protection of the environment.

"Categorical Pretreatment Standard" means any regulation containing pollutant discharge limits promulgated by the U.S. Environmental Protection Agency in accordance with Sections 307(b) and (c) of the Federal Water Pollution Control Act or contained in the administrator's list adopted pursuant thereto.

"CCH or "City" means the City and County of Honolulu and is the "Control Authority" for the purposes of 40 CFR 403.3.

"Code" means Chapter 14, "Public Works Infrastructure Requirements including Fees and Services," of the Revised Ordinances of Honolulu 1990, as amended (ROH), and includes any administrative rule adopted thereunder and the conditions of any permit issued by the Director pursuant thereto.

"Connection" means any connection made, or to be made, to a public sewer at a manhole, in a new manhole, at the end of a stub, wye, saddle wye, lateral or main.

"Days" mean calendar days, inclusive of weekends and holidays, unless otherwise indicated.

"Director" means the Director of the Department of Environmental Services, City and County of Honolulu (ENV), or the Director's authorized representative(s).

"Federal Water Pollution Control Act" or "Clean Water Act" or the "Act" refers to 33 U.S.C. 1251, et seq. as amended, as well as regulations and standards promulgated by the EPA, or successor, pursuant to the Act.

"Indirect Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Federal Water Pollution Control Act.

"Industrial User" or "IU" means any person, firm, corporation or other entity that is a source of non-domestic discharge and includes a Significant Industrial User, Nonsignificant Categorical Industrial User, and a Nonsignificant Industrial User.

"Industrial Wastewater" means all water-carried wastes and wastewater excluding domestic wastewater.

"Industrial Wastewater Discharge Permit" or "Permit" means a permit issued by the Department of Environmental Services authorizing discharge of industrial wastewater, unless otherwise indicated.

"Infrequent" means having an occurrence of no more than once in any six-month period as it relates to the enforcement actions guide or violations that are not repeated during consecutive site inspections.

"Letter of Warning" is an initial written notice informing a User that a violation of the Code has occurred and directing the User to explain the cause of the violation and correct the violation.

"National pretreatment standard," "pretreatment standard," or "standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Federal Water Pollution Control Act, as amended, which applies to an Industrial User. This term includes prohibitive discharge limits established pursuant to 40 CFR Section 403.5, categorical pretreatment standards (40 CFR Chapter I, Subchapter N, Parts 405-471), and local limits provided in the city ordinances, rules, policies or guidelines.

"Notice of Order" is an administrative enforcement action that the Director may issue upon determining that a violation cited in an NOV remains uncorrected after the deadline specified in the NOV, or upon determining that a violation is a reoccurring violation of any Federal, State, or local law, ordinance, rule or regulation.

"Notice of Violation" or "NOV" is an administrative enforcement action that the Director may issue upon determining that there is a violation of the Code and directing the User to correct the violation by a specified deadline.

"Order" refers to a written determination, revocation, authorization, permission, direction, or document, issued by the Director pursuant to the Revised Ordinances of Honolulu.

"Person" or words importing persons, for instance, "another," "others," "any," "anyone," "anybody" and the like, shall signify not only individuals, but corporations, trusts, partnerships, limited liability companies, firms, associations, societies, communities, assemblies, inhabitants of a district or neighborhood, or persons known or unknown, and the public generally, where it appears, from the subject matter, the sense and connection in which such words are used, that such construction is intended.

"Publicly-Owned Treatment Works" or "POTW" means a treatment works, as defined by Section 212 of the Federal Water Pollution Control Act that is owned by a state or municipality (as defined by Section 502(4) of the Federal Water Pollution Control Act). POTW includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. POTW includes sewers, pipes, and other conveyances if they convey wastewater to a POTW. POTW also means the municipality, as defined in Section 502(4) of the Federal Water Pollution Control Act that has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. As it relates to this plan, POTW means the collection system and treatment works owned and operated by CCH.

“Pretreatment Program” means the City and County of Honolulu Pretreatment Program, which is overseen by the Department of Environmental Services, Regulatory Control Branch.

“Regulatory Control Branch” or “RC” means the branch responsible for: implementing and complying with the National Pretreatment Standards for CCH; issuing IWDPs; and inspecting, monitoring, and enforcing the Pretreatment Program to prevent upset, interference, and pass through to the POTW.

"Sewer Use Ordinance" or "Ordinance" refers to ROH Chapter 14.

“SIU” or "Significant Industrial User" is defined as:

- a. All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and
- b. Any other Industrial User that:
 - i. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); or
 - ii. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - iii. Is designated as such by CCH on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation and sewer system or for violating any pretreatment standard or requirement.

“Significant Noncompliance” or “SNC.” An IU is in SNC if its violation(s) meet one or more of the following criteria as defined by 40 CFR 403.8(f)(2)(viii):

- a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
- b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements taken for the same pollutant parameter taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the

applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

- c. Any other violation of a Pretreatment Standard or Requirement, as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
- d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment, or has resulted in the POTW's exercise of its emergency authority under paragraph 40 CFR 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;
- e. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- f. Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- g. Failure to accurately report noncompliance;
- h. Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment Program.

"Slug" means any discharge of water, sewage, or industrial waste that in concentration of any given constituent or in quantity of flow exceeds for any duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

"User" means a person using any part of the public sewer system, including, but not limited to, an Industrial User or the owner of the benefitted property.

"Violation" means violation of Federal, State, or local laws that include, but are not limited, to the Sewer Use Ordinance, local administrative rules, or an Industrial Wastewater Discharge Permit.

"Wastewater" means liquid waste of any kind, whether treated or not, and whether animal, mineral, or vegetable, including sewage, agricultural, industrial and thermal wastes.

“Wastewater Discharge Notice” or “WDN” is an initial enforcement action issued by Regulatory Control Branch personnel to notify a User that a violation of the Code has occurred. A WDN can be issued in the field and requires corrective action and a response from the User.

SECTION I. INTRODUCTION

The purpose of this Enforcement Response Plan (ERP) is to provide guidance to personnel at the Department of Environmental Services, City and County of Honolulu (ENV and CCH, respectively), when determining the enforcement action to be taken, identify the staff responsible for each type of enforcement action, and outline the appropriate time frame for implementing the enforcement action. The ERP provides for enforcement or escalation of enforcement of violations of the Revised Ordinance of Honolulu of 1990, as amended (ROH), the National Pretreatment Standards, the Hawaii Revised Statutes (HRS), Industrial Wastewater Discharge Permits (IWDP), ENV’s administrative rules, and other general Pretreatment Program rules and regulations. The ERP is implemented in accordance with ROH Chapter 14 and fulfills the requirements of 40 CFR 403.8(f)(5).

This ERP is designed to be a flexible plan to implement the enforcement action(s) most appropriate to a particular type of violation and the violation’s circumstances. The ERP outlines a procedure for identifying, documenting, and responding to Pretreatment Program violations.

ELEMENTS OF THE ENFORCEMENT RESPONSE PLAN

The National Pretreatment Regulations 40 CFR 403.8(f)(5) require a POTW to develop and implement an enforcement response plan that contains detailed procedures on how a POTW will investigate and respond to instances of Industrial User noncompliance. The plan shall at a minimum:

- a. Describe how the POTW will investigate instances of noncompliance;
- b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of Industrial User violations and the time periods in which responses will take place;
- c. Identify (by title) the official(s) responsible for each type of response;
- d. Adequately reflect the POTW’s primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in 40 CFR 403.8 (f)(1) and (f)(2).

The ERP sets forth initial and escalating levels of enforcement actions for violations of the Code or pretreatment regulations. An initial enforcement action may include

notifying an IU of any violation through verbal communication, a meeting with the appropriate parties, the issuance of a Wastewater Discharge Notice (WDN), a Letter of Warning (LOW), or a Notice of Violation. For continued violations, administrative enforcement actions will be issued in an escalating manner.

SECTION II. RESPONSIBILITIES OF CCH PERSONNEL

CCH personnel with enforcement responsibilities include:

Regulatory Control Branch (RCB). The RCB administers CCH's pretreatment program and is comprised of the following personnel: the Regulatory Control Branch Head; RCB Engineers; and RCB Environmental Technicians. These personnel are responsible for: (1) conducting pretreatment inspections and investigations; (2) identifying violations and issuing initial enforcement actions; and (3) tracking corrective actions and determining compliance status.

Environmental Quality Assistant Chief or Chief (EQC). The EQC signs Letters of Warning, Notices of Violation, and Orders suspending or revoking a User's IWDP on behalf of the Director.

ENV Director (Director). The ENV Director issues Orders, Termination of Discharge, and penalties and fines. The Director also may exercise emergency actions, and initiate judicial proceedings.

Legal counsel. CCH's legal counsel provides legal consultation as requested by ENV on enforcement matters and judicial responses deemed necessary by the ENV Director.

SECTION III. INVESTIGATION AND IDENTIFICATION OF NONCOMPLIANCE

CONTROL MECHANISM

CCH satisfies the control mechanism requirement of 40 CFR 403.8(f)(1)(iii) by issuing an IWDP to an Industrial User. To authorize the discharge of wastewater to a POTW, an Industrial User must comply with an IWDP's terms and conditions, such as pretreatment and reporting requirements and discharge limitations.

PRETREATMENT COMPLIANCE MONITORING

The Pretreatment Program regulates discharges to the POTW from Industrial Users by issuing Permits that establish pretreatment requirements. Requirements include, but are not limited to: pretreatment standards; sampling and analyses; reporting, recordkeeping, and maintenance; and cleaning of pretreatment devices, as set forth in ROH § 14-5.1.

RCB has a pretreatment compliance monitoring program to evaluate the compliance status of Industrial Users, particularly Significant Industrial Users (SIUs), in relation to

applicable Federal, State, and local Pretreatment Program standards and requirements. The compliance monitoring activities, including screening compliance data, are intended to detect and document violations. Sample taking, analysis, and the collection of other information are performed with sufficient care to produce evidence admissible in enforcement actions and judicial proceedings.

RCB personnel are authorized by ROH § 14-1.10(c) and 40 CFR 403.8(f)(1)(v). ROH § 14-1.10(c) provides:

- (1) Upon showing of proper credentials, persons authorized by the director or persons authorized by the EPA or [Department of Health, State of Hawaii (DOH)], when necessary for the performance of their duties, shall have the right to enter the industrial user's premises Such authorized personnel shall have access to any facilities and records necessary for determining compliance, including, but not limited to, the ability to copy any records, inspect any monitoring equipment, and sample any wastewater subject to regulation under [ROH Chapter 14]. Notwithstanding any provision of law, persons authorized by the director may enter an industrial discharger's premises at any time if the director determines that an imminent hazard to persons or property exists on or as a result of activities conducted on the industrial user's premises.
- (2) The Director may inspect the process areas of an industrial discharger, inspect chemical and waste storage areas, and inspect, sample and monitor wastewater production activities
- (3) Persons authorized by the director, EPA or DOH may witness any sampling or sampling procedures required of any industrial user as part of a self-monitoring program or an industrial wastewater discharge permit.

As required by Section 403.8(f)(2)(iv)-(vii) of the POTW Pretreatment Program Requirements, ENV performs the following procedures to determine Industrial User compliance:

- a. Receive and analyze industrial self-monitoring reports;
- b. Randomly sample and analyze industrial effluent and conduct inspections of Industrial Users to determine compliance independently from industrial self-monitoring reports;
- c. Evaluate the Significant Industrial Use's potential for Slug discharge and the requirement for Slug discharge control plan;

- d. Investigate instances of noncompliance with Pretreatment Standards and requirements to produce admissible evidence through sampling and inspections as necessary.

Apart from the Industrial User's requirement to sample and self-report, CCH also performs sampling and analytical testing. CCH sampling activities provide information used by CCH to independently verify an Industrial User's compliance with applicable Pretreatment Program standards. All sample collection and analyses are performed in accordance with 40 CFR 136.

SCREENING OF COMPLIANCE DATA

All compliance data for Industrial Users generated through self-monitoring reports or CCH samplings and inspections are carefully reviewed and analyzed to identify violations. An Industrial User's failure to submit reports by the required time also constitutes a violation.

INSPECTION

The purpose of an inspection is to: (1) investigate noncompliance(s); (2) verify if an Industrial User meets its compliance schedule milestones; (3) identify changes to an Industrial User's pretreatment process; (4) evaluate the adequacy of existing pretreatment devices and the device's maintenance frequency, or the need to require additional equipment; and (5) verify that permitted sampling locations produce representative samples. An Industrial User's pretreatment process change may include: addition of equipment to; subtraction of equipment from; modification of equipment; modification, addition, or subtraction of chemicals added; and modification of process wastewater flowrate. Inspection and sampling activities may be announced or unannounced. Announced inspections and samplings are pre-planned with an Industrial User. An unannounced inspections and samplings are performed to verify the compliance status of a particular Industrial User during a random production day.

Inspections may be performed on demand (ie, complaint or specific incident enforcement) in response to a known or suspected violation identified through monitoring, inspection, reports, or public complaint. Information obtained through means other than the above is also valid for enforcement purposes.

Here are the general procedures, they may be modified for specific circumstances as required. CCH reserves the right to modify any step of the procedures depending on the particular circumstances.

Pre-inspection Procedures

- a. Conduct pre-inspection planning, which includes reviewing background information such as the IWDP, facility layout, process diagrams, historical

compliance and enforcement status, self-monitoring records, and Slug discharge control plans;

- b. Identify safety equipment necessary for inspection;
- c. Become familiar with entry procedures and the name of the Industrial User's authorized representative;
- d. For announced visits, contact the Industrial User to establish a convenient date and time to perform inspection; and
- e. Prepare sample containers and sampling equipment, if needed.

Inspection Procedures

- a. Prior to entering the facility, conduct a site reconnaissance of the Industrial User's facility. Note the size of the facility, additional buildings, outside chemical storage, and location of any visible sewer drains and discharge points to CCH system;
- b. For announced inspections, request a pre-inspection discussion with the Industrial User's authorized representative;
- c. During unannounced inspections, present CCH credentials and establish contact with the Industrial User's representative;
- d. Obtain general information and overview of the Industrial User;
- e. Request a complete tour of the facility, especially production areas that generate wastewater discharge, and obtain all necessary information to complete the industrial inspection;
- f. Document the exact sampling points, sampling procedures, and techniques used by the Industrial User;
- g. Check for implementation of the Industrial User's Slug discharge control plan, if applicable, and have the Industrial User update the plan if necessary;
- h. Determine if sampling is required and complete CCH sampling, as necessary;
- j. Sampling results of any sampling activity should be incorporated into the inspection report;

- k. Complete the inspection report and return to the Industrial User within 30 days of the inspection;
- l. Establish if the Industrial User must perform any follow-up compliance activities.

INDUSTRIAL USER COMPLIANCE STATUS

An Industrial User's compliance status may be categorized as follows: (1) Significant Noncompliance (SNC); (2) Inconsistent Compliance (IC); or Compliant (CO).

Significant Noncompliance

An Industrial User in "Significant Noncompliance" is issued a Notice of Violation as discussed below. All Significant Industrial Users are evaluated under the SNC criteria on a rolling 6-months basis. Pursuant to 40 CFR 403.8(f)(2)(viii), ENV publishes, in a general circulation newspaper, the names of Industrial Users found in SNC of Industrial User Pretreatment Standards. The publication summarizes any SNC criteria violated by an Industrial User during the prior 12-month period.

Inconsistent Compliance (IC)

An Industrial User is in IC if it has violations, but those violations do not meet any of the SNC criteria in any calendar year quarter.

Compliant (CO)

An Industrial User is in CO if it has no violations in the relevant calendar year quarter.

SECTION IV.

ENFORCEMENT ACTIONS

Depending on factors such as: (1) the nature and seriousness of a violation and (2) the impacts on human health and safety, the general enforcement level is applied as provided in Section V. Enforcement Actions Guide and Appendix A-Enforcement Actions Guide.

EMERGENCY ACTION

The Director may take all necessary action to immediately and effectively halt or prevent any discharge or threat of discharge to the POTW that may present an imminent endangerment to public health or the environment, or that interferes or threatens to interfere with the operations of the POTW. Upon verbal or written notification by the Director, the User must immediately halt such discharge or threat of discharge.

INITIAL ENFORCEMENT ACTIONS

Initial enforcement actions are communications (verbal, written, or both) from CCH to inform the User that a minor or isolated violation that does not meet an SNC criteria has occurred. The purpose of an initial enforcement action is to notify the User of the violation(s) and require corrective action. It may be the only response necessary in cases of infrequent and minor violations. Generally, ENV will issue an initial enforcement action within three business days of the date ENV is notified of a violation.

Verbal Notification:

Verbal notification by telephone call or in-person communication is used for minor or infrequent violations, e.g., late reporting, and provides an immediate notice to a User that a violation has occurred. A record of the verbal notification is generated through an email or entry in RCB's database.

Informal Meeting:

An informal meeting between RCB and a User is used to notify the User of a violation, gather information concerning the violation, discuss steps to alleviate the violation, and determine the User's level of commitment to correcting the violation.

Wastewater Discharge Notice (WDN):

A WDN is an initial written warning used to notify an Industrial User that a pretreatment violation has occurred and must be remedied. A WDN describes each violation separately, states what action, if any, is necessary to correct each violation, and states the date when the necessary corrective action(s) must be completed in order to avoid the imposition of administrative or civil fines. ETs are authorized to issue a WDN, which may be issued as a follow up to, or in lieu of, a verbal notification. A WDN provides an Industrial User with an opportunity to explain the cause of the violation and initiate corrective actions on its own. A written record of the WDN and any response from the Industrial User is maintained in RCB's database to document the Industrial User's attempts to resolve the violation. Generally, CCH will issue no more than two WDNs for recurring violations with similar causes before escalating the enforcement to an NOV.

Letter of Warning (LOW):

An LOW is a written notice informing a User that a violation has occurred. An LOW describes each violation separately, states what action, if any, is necessary to correct each violation, and states the date by which the necessary corrective action(s) must be completed in order to avoid the imposition of administrative or civil fines. An LOW also requires a User to explain the cause of a violation and correct the violation. Within the specified deadline, the User is required to provide written confirmation identifying the problem that caused the violation and the steps taken to return to compliance. RCB

personnel are authorized to issue LOWs. A LOW must be served by personal service or certified mail.

ADMINISTRATIVE ENFORCEMENT ACTIONS

The Director may issue administrative enforcement actions as authorized by the Code in the Director's discretion, including, but not limited to, directing an Industrial User to undertake or to cease specified activities. An administrative enforcement action is a formal response to a violation that meets the Significant Noncompliance criteria, unless judicial proceedings are more appropriate. Administrative enforcement actions may incorporate compliance schedules, administrative penalties and fines, and Termination of Discharge actions. The circumstances of an Industrial User's violation dictate the type of administrative enforcement action issued. Generally, ENV will issue an administrative enforcement action within thirty days of the date ENV receives notice of an applicable violation.

Notice of Violation (NOV)

An NOV is issued when the Director determines a User violated ROH Chapter 14, any rule adopted thereunder, or any permit issued pursuant thereto. It is an official written communication from CCH to a User informing the User that a pretreatment violation has occurred. The NOV provides the User with an opportunity to correct the violation by undertaking specified activities ordered by the Director. NOVs are served by certified mail or hand delivery to the party responsible for the violation.

At a minimum, an NOV contains the following information:

- a. The date of the NOV;
- b. The name and address of the person served with the NOV;
- c. The section number of the ordinance, rule, other law, or IWDP that has been violated;
- d. The nature of each violation, including, but not limited to, the date(s) and location of each violation;
- e. The corrective action required for each violation;
- f. The deadline for completing each corrective action.

If the violation(s) is/are not resolved at the NOV level, enforcement will be escalated to an NOO.

Notice of Order (NOO)

An NOO is an official written communication of an Administrative Enforcement with penalties that the Director issues when a violation cited in an NOV remains uncorrected after the deadline specified in the NOV, or when the Director determines that a violation is a recurring violation of any Code. NOOs are served by certified mail or hand delivery to an authorized representative of the User.

At a minimum, an NOO must contain the following information:

- a. The date of the NOO;
- b. The name and address of the person served with the NOO;
- c. The uncorrected violation(s), including, but not limited to, the date(s) and location of each uncorrected violation, and the corresponding NOV, or a prior violation and the date(s) and location of each recurring violation;
- d. The amount of the fine imposed and the amount of additional fines that will be imposed until the date of correction, if any;
- e. The corrective action for each violation and deadline for completing each corrective action, if applicable.

Compliance Order and Compliance Schedule

A Compliance Order and Compliance Schedule is used when a User has violated or continues to violate the Code after initial enforcement actions were issued. A Compliance Order and Compliance Schedule is usually incorporated in an NOV or as an IWDP condition and contains an enforceable timetable with milestones that the User must meet in order to achieve compliance. Failure by the User to comply with the Compliance Order and Compliance Schedule milestones may result in issuance of escalating enforcement actions. A Compliance Order and Compliance Schedule is served by certified mail or hand delivery to the party responsible for the violation.

Contents of a Compliance Schedule. At a minimum, a Compliance Schedule to install or construct an engineered device such as a pretreatment device includes the following actions:

- a. Hire an engineer;
- b. Obtain approved permits, as applicable;
- c. Complete purchase of a pretreatment device;
- d. Execute any necessary contracts for services and work needed, as applicable;

- e. Start installing or constructing pretreatment device;
- f. Complete the installation or construction of the pretreatment device; and
- g. Place the pretreatment device into operation.

A Compliance Schedule should specify any lead times and critical dates.

Additionally, a Compliance Order and Compliance Schedule may require the User to do any or all of the following:

- a. Cease and desist from a violation;
- b. Correct the violation at the User's own expense before a date specified in the Order;
- c. Pay of any fines or penalties; and
- d. Appear before the Director at a time and place specified in the Order.

The submission of the Compliance Schedule does not relieve the User of liability for any violations occurring before or after receipt of the Compliance Order.

Cleanup and Abatement Order

A Clean up and Abatement Order is used when a User's discharge results in a violation of the Code, rules, regulation, order or any other law. It is an official written communication from CCH directing a User to clean up and attempt to recover a discharge and do what is necessary or required by the Director to abate the effects of a violation. As a result of the magnitude of the violation, or when necessary to prevent harm to public health or the environment, the Director may require the discharger to initiate any necessary cleanup, abatement, or remedial work. Issuance of a Cleanup and Abatement Order does not preclude any other enforcement action against the User.

A User may also be liable to CCH for the costs undertaken by the Director, including, but not limited to, administrative costs, inspection costs, attorney's fees, and fines and penalties or other liability imposed upon CCH by other agencies, persons, or organizations, whether by way of court action, administrative action, or settlement.

Show Cause Order

A Show Cause Order directs a User to appear before the Director to explain the User's noncompliance and explain why a proposed enforcement action should not be taken. A Notice of Violation and Show Cause Order is served personally or by certified mail to an authorized representative of the User at least 15 days before the hearing. The Notice of Violation and Show Cause Order must specify the time and place for the hearing, the proposed enforcement action, the reason for such action, and request that the User

explain why the proposed enforcement action should not be taken. Regardless of whether a duly notified User appears at the hearing, immediate enforcement action may be pursued.

TERMINATION ACTIONS

Termination actions are used when, in the Director's discretion, a User has not demonstrated or cannot demonstrate satisfactory progress toward compliance with the requirements of the Ordinance, a regulation, order, or other law, or as an escalating enforcement action related to a significant violation when a noncompliant User fails to respond adequately to prior enforcement actions. There are four (4) methods CCH may use to terminate sewer service:

- (1) Issue a Cease and Desist Order;
- (2) Suspend or revoke an Industrial User's IWDP;
- (3) Issue a Termination of Discharge Order; or
- (4) Sever water service.

Generally, ENV will issue a termination action no more than 45 days from the date it learns of a pretreatment violation warranting such action.

Cease and Desist Order

The Director may issue a Cease and Desist Order directing a User to immediately halt discharges to the POTW. The Director may require the User to achieve compliance in accordance with a detailed time schedule of specific actions to prevent future violations of the Ordinance, a regulation, order, or any other law. In the Cease and Desist Order, the Director may require a User to make reimbursement payment to CCH for the cost of any inspection or monitoring incurred by CCH that is associated with the violation, which in the discretion of the Director was necessary as a result of the violation.

Permit Suspension

The basis for IWDP suspension is in accordance with ROH §14-5.4.

The Director may issue a suspension order to any permit holder to halt a discharge that presents an immediate hazard or threat to: (1) public health, safety, or welfare; (2) the environment; (3) the POTW; or (4) CCH employees. The IWDP suspension period may not exceed 45 calendar days.

An Industrial User whose IWDP is suspended must immediately cease and desist discharging wastewater covered by the IWDP. If the Industrial User fails to comply with the suspension order, the Director may take necessary steps to insure compliance, including, but not limited to, issuing fines or penalties.

Upon proof of compliance with RCB's discharge requirements, an Industrial User's IWDP may be reinstated.

Permit Revocation

ENV may revoke an IWDP in accordance with ROH § 14-5.9.

The Director may revoke an IWDP to halt an immediate hazard or threat to the public, safety, or welfare, to the environment, the POTW, or CCH employees. The Director may revoke an IWDP via a telephone call or email, or a Cease and Desist Order issued via certified mail or hand-delivery. When ENV revokes an Industrial User's IWDP, the Industrial User must immediately cease all wastewater discharges covered by the IWDP.

If ENV revokes an Industrial User's IWDP, before discharging wastewater covered by the former IWDP, the Industrial User must apply for a new IWDP and pay all delinquent ENV fees, charges, penalties, and such other sums as may be due to ENV. Any costs incurred by ENV in revoking the IWDP and disconnecting the sewer connection must be paid by the Industrial User before ENV issues a new IWDP.

The Director may take necessary steps to ensure compliance by disconnecting or permanently blocking the Industrial User's Connection to the sewer system.

Termination of Discharge Order

The Director may issue a Termination of Discharge Order to a User that has not or cannot demonstrate satisfactory progress toward compliance with the requirements of the Code or the Industrial User's IWDP. After providing 30-days' written notice to a User by certified mail, the Director may sever or plug the User's Connection to CCH sewer system, or otherwise prevent the User from discharging to the POTW.

Water Service Severance

To prevent wastewater discharges, the Director may coordinate with the Board of Water Supply to suspend or terminate water service to a User.

Administrative Fines

In addition to other remedies available to the Director, for violations of Pretreatment Standards, the Code authorizes the Director to assess penalties and fines of not less than \$1,000.00 per violation per day, except that in cases where such offense continues after written notice from the Director of such violation, each day's continuance shall constitute a separate offense, and not more than \$25,000, per violation, per day, unless otherwise provided by law. When determining the amount of the fine, the Director must consider the type and degree of the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the fine

on the violator, and such other considerations that the Director determines, in the exercise of the Director's discretion, have a bearing on the amount of the fine.

JUDICIAL PROCEEDINGS

Civil Litigation

Civil litigation may include filing a lawsuit against an individual or organization to secure court-ordered action to correct noncompliance and to secure penalties for violations, including the recovery of costs to the POTW for the noncompliance and attorneys' fees. This process may be appropriate when there is an emergency situation where injunctive relief is necessary to prevent discharges that affect human health or the environment, or the penalty to be assessed exceeds that which can be assessed administratively. The National Pretreatment Regulations, 40 CFR 403.8(f)(vi)(A), requires that POTWs have legal authority to seek or assess civil penalties in at least the amount of \$1,000.00 per day for each violation by a Significant Industrial User. The National Pretreatment Regulations also requires the City to have legal authority to seek injunctive relief for noncompliance by a Significant Industrial User. Both of these requirements are included in ROH §§ 14-5.19 and 14-5.20. The Director initiates civil litigation through legal counsel.

Criminal Prosecution

Criminal prosecution is a formal process of charging an individual or organization with an Ordinance violation that is punishable, upon conviction, by a fine and imprisonment. The ROH authorizes criminal prosecution for Ordinance violations when the violator acts intentionally, knowingly, recklessly, or negligently. Criminal prosecution may be appropriate in cases of repeated violations or when other efforts to restore compliance have failed. The Director may initiate criminal prosecution through legal counsel.

SECTION V. ENFORCEMENT ACTIONS GUIDE

The Appendix A-Enforcement Actions Guide describes the type of escalating enforcement responses the City will take in response to a User's violation. The Appendix provides a prescribed range of appropriate enforcement actions based on the type of violation and the violation's circumstances.

CRITERIA FOR SELECTING ENFORCEMENT ACTION

When determining the most appropriate enforcement action, ENV considers the following factors:

Seriousness of the Violation

An isolated instance of noncompliance that does not threaten the POTW, environment, public health, threaten the integrity CCH's Pretreatment Program, may be addressed with an initial enforcement action. Instances of Significant Noncompliance may be addressed with an Order requiring the User's return to compliance by a specified deadline.

Duration of the violation

Violations, regardless of severity, that continue over prolonged periods of time will subject a User to escalated enforcement actions. If a User fails to comply with an administrative enforcement action, CCH may assess administrative penalties or initiate judicial proceedings. If a prolonged violation results in serious harm to the POTW, CCH may terminate service or seek injunctive relief to halt further violations, as well as seek to recover the costs of repairing any damage.

Effect of the violation on the receiving waters

Any violation that results in environmental harm will be met with a severe response. Environmental harm should be presumed whenever a pollutant discharged by a User into the sewer system: (1) passes through the POTW; (2) causes a violation of an ENV NPDES permit; or (3) has a toxic effect on the receiving waters (e.g., a fish kill). Administrative enforcement action and fines may be issued. The enforcement response should also ensure the noncompliant User compensates ENV for any NPDES fines and penalties levied against CCH as a result of the User's noncompliance. ENV may also pursue damages for the destruction or harm to receiving waters. If the discharge causes repeated harmful effects, ENV may revoke the User's IWDP and terminate the discharge Connection.

Effect of the violation on the POTW

A violation that: results in significant increases in treatment costs; interferes or harm to POTW personnel, equipment, processes, or operations; damages the collection system (e.g., as a result of a corrosive discharge); or causes sludge contamination resulting in increased disposal costs, may result in an administrative fine or civil penalty and an Order to correct the violation and provide for the recovery of additional costs and expenses to repair the POTW.

Compliance history of the Industrial User

A pattern of recurring violations may indicate that an Industrial User's treatment system is inadequate and may alert ENV to the likelihood of significant, future violations. An Industrial User that commits recurring violations will receive escalating enforcement actions to sufficiently ensure consistent compliance is achieved. Compliance history is

an important factor when deciding the appropriate enforcement action response to issue a particular violator.

Economic Benefit to the User

When determining the appropriate enforcement action or fine, ENV should evaluate whether the User derived an economic benefit or savings from committing the violation.

Good-faith efforts of the User

A User's good faith in correcting its violation is a factor ENV considers when determining its enforcement action response to issue. A User's good faith attempt to correct its violation does not eliminate the necessity for an enforcement action. Good faith is defined as a User's honest intention to remedy a violation and other actions that give support to the User's intention. A User demonstrating its willingness to comply with the applicable requirements, *e.g.*, cooperating and completing corrective measures in a timely manner, may result in less severe enforcement action.

ENFORCEMENT RESPONSE PLAN

APPENDIX A - ENFORCEMENT ACTIONS GUIDE

Appendix A- Enforcement Actions Guide

Legend: C&AO-Cleanup and Abatement Order, C&DO-Cease and Desist Order, ENV DIR-Director of Environmental Services, EQC-Environmental Quality Division Chief or Assistant Chief, ET-Environmental Technician; NOO-Notice of Order, NOV-Notice of Violation, POTW-Publicly Owned Treatment Works, RCBH-Regulatory Control Branch Head, RCE-Regulatory Control Engineer, SCO-Show Cause Order, SET-Supervising ET, SNC-Significant Non-Compliance, WDN-Wastewater Discharge Notice								
<u>VIOLATION</u>	<u>CIRCUMSTANCE</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PERSONNEL</u>					
			<u>ET</u>	<u>SET</u>	<u>RCE</u>	<u>RCBH</u>	<u>EQC</u>	<u>ENV DIR</u>
UNAUTHORIZED DISCHARGES (NO IWDP)								
Discharges without an IWDP or approval	IU unaware of requirement	Telephone call or in-person meeting	x	x	x	x		
		Letter of Warning with application form attached					x	
	IU unaware of requirement resulting in Significant Noncompliance	Administrative Enforcement:						
		NOV (C&DO)					x	
		Termination of Discharge						x
		Emergency Action						x
		Judicial Proceedings						x
	Failure to apply after notice by CCH	Administrative Enforcement:						
		NOO (Penalties and fines)						x
		Emergency Action						x
		Termination of Discharge						x
		Judicial Proceedings						x

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<u>VIOLATION</u>	<u>CIRCUMSTANCE</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PERSONNEL</u>					
			<u>ET</u>	<u>SET</u>	<u>RCE</u>	<u>RCBH</u>	<u>EQC</u>	<u>ENV DIR</u>
Discharge without a valid IWDP, including revoked or expired IWDPs	IU has not submitted renewal application	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Administrative Enforcement:						
		NOV					x	
	Failure to submit renewal application after notice by CCH	Administrative Enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		NOV					x	
		NOO (SCO/C&DO/penalties and fines)						x
		Emergency Action						x
		Termination of Discharge						x
		Judicial Proceedings						x

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<u>VIOLATION</u>	<u>CIRCUMSTANCE</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PERSONNEL</u>					
			<u>ET</u>	<u>SET</u>	<u>RCE</u>	<u>RCBH</u>	<u>EQC</u>	<u>ENV DIR</u>
Discharge without a valid IWDP, including revoked, suspended, or expired IWDPs	Failure to immediately cease discharge	Administrative Enforcement:						
		NOV					x	
		NOO (C&DO/penalties and fines)						x
		Emergency Action						x
		Termination of Discharge						x
		Judicial Proceedings						x
	Failure to re-apply, pay fees and fines	Administrative Enforcement:						
		NOO (Penalties and fines)						x
		Termination of Discharge						x
		Judicial Proceedings						x

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<u>VIOLATION</u>	<u>CIRCUMSTANCE</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PERSONNEL</u>					
			<u>ET</u>	<u>SET</u>	<u>RCE</u>	<u>RCBH</u>	<u>EQC</u>	<u>ENV DIR</u>
VIOLATIONS DETECTED DURING ANY MONITORING EVENT (IU SELF MONITORING, CCH SAMPLING, OR CCH INSPECTION)								
Entry Denied	Entry denied to authorized ENV, DOH, or EPA personnel, inaccessible, or obstruction to conduct official duties	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV					x	
		Emergency Action						x
		Judicial Proceedings						x
Continued Denial of Entry	Entry denied to authorized ENV, DOH, or EPA personnel, inaccessible, or obstruction to conduct official duties	Administrative Enforcement:						
		NOO (SCO/C&DO/penalties and fines)						x
		IWDP suspension						x
		IWDP revoked						x
		Termination of Discharge						x
		Judicial Proceedings						x

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<u>VIOLATION</u>	<u>CIRCUMSTANCE</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PERSONNEL</u>					
			<u>ET</u>	<u>SET</u>	<u>RCE</u>	<u>RCBH</u>	<u>EQC</u>	<u>ENV DIR</u>
Discharge in violation of the federal general, specific prohibitions, federal categorical limits, or local limits	Single violation	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV					x	
		NOO (SCO/C&DO)						x
		Judicial Proceedings						x
	Evidence of intent/negligence	Administrative Enforcement:						
		NOV					x	
		NOO (C&DO/C&AO/penalties and fines)						x
		IWDP suspension						x
		IWDP revoked						x
		Emergency Action						x
		Termination of Discharge						x
		Judicial Proceedings						x
	Recurring violations; violation of enforcement order	Administrative Enforcement:						
		NOO(C&DO/penalties and fines)						x
		Termination of Discharge						x
		Emergency Action						x
		Judicial Proceedings						x

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VIOLATION	CIRCUMSTANCE	ENFORCEMENT RESPONSES	PERSONNEL					
			ET	SET	RCE	RCBH	EQC	ENV DIR
Discharge in violation of the federal general, specific prohibitions, federal categorical limits, or local limits	Failure to mitigate violation or halt productions	Administrative Enforcement:						
		NOV					x	
		NOO (SCO/C&DO/penalties and fines)						x
		Termination of Discharge						x
		Emergency Action						x
		Judicial Proceedings						x
Improper sampling	Sampling at incorrect location	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV					x	
	Use of incorrect sample collection technique	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV					x	

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VIOLATION	CIRCUMSTANCE	ENFORCEMENT RESPONSES	PERSONNEL					
			ET	SET	RCE	RCBH	EQC	ENV DIR
Improper sampling	Failure to monitor all pollutants as required by the IWDP	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV					x	
Continued improper sampling	Continued or recurring violation of incorrect sampling location, collection method, or monitoring of pollutants	Administrative Enforcement:						
		NOV					x	
		NOO (SCO/C&DO/penalties and fines)						x
		Emergency Action						x
		Termination of Discharge						x
		IWDP suspension						x
		IWDP revoked						x
		Judicial Proceedings						x

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<u>VIOLATION</u>	<u>CIRCUMSTANCE</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PERSONNEL</u>					
			<u>ET</u>	<u>SET</u>	<u>RCE</u>	<u>RCBH</u>	<u>EQC</u>	<u>ENV DIR</u>
OTHER PERMIT VIOLATIONS								
Waste streams are diluted in lieu of pretreatment	Initial violation	Administrative Enforcement:						
		NOV					x	
	Recurring	Administrative Enforcement:						
		NOO (SCO/C&DO/penalties and fines)						x
		IWDP suspension						x
		IWDP revoked						x
		Termination of Discharge						x
Judicial Proceedings						x		
Failure to install,properly operate, or maintain pretreatment facility, device, or monitoring equipment	Willful or otherwise	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV					x	
		NOO (SCO/C&DO/penalties and fines)						x
		Termination of Discharge						x
		Emergency Action						x
		Judicial Proceedings						x

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VIOLATION	CIRCUMSTANCE	ENFORCEMENT RESPONSES	PERSONNEL					
			ET	SET	RCE	RCBH	EQC	ENV DIR
Failure to submit any required report, including self-monitoring reports, compliance reports, notification of violation, or documentation of corrective action taken after identifying a violation	Late less than or equal to 45 days	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV					x	
	Late greater than 45 days	Administrative Enforcement:						
		NOV					x	
		NOO (SCO/C&DO/penalties and fines)						x
		IWDP suspension						x
		IWDP revoked						x
		Termination of Discharge						x
		Emergency Action						x
		Judicial Proceedings						x
Reporting false information	Any instance, including intentionally withholding information	Administrative Enforcement:						
		NOV					x	
		NOO (SCO/C&DO/penalties and fines)						x
		IWDP suspension						x
		IWDP revoked						x
		Termination of Discharge						x
		Emergency Action						x
		Judicial Proceedings						x

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<u>VIOLATION</u>	<u>CIRCUMSTANCE</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PERSONNEL</u>					
			<u>ET</u>	<u>SET</u>	<u>RCE</u>	<u>RCBH</u>	<u>EQC</u>	<u>ENV DIR</u>
COMPLIANCE SCHEDULE VIOLATIONS								
Compliance Schedules	Missed milestone by less than 90 days, or will not affect final milestone	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV						x
	Missed milestone by more than 90 days or will affect final milestone	Administrative Enforcement:						
		NOO (SCO/C&DO/penalties and fines)						x
		IWDP suspension						x
		IWDP revoked						x
		Judicial Proceedings						x
Failure to meet reporting requirement		Recurring violation or violation of schedule in enforcement order	Initial enforcement:					
	Letter of Warning						x	
	Administrative Enforcement:							
	NOO (SCO)							x
	Termination of Discharge							x
	Emergency Action							x
	Judicial Proceedings							x

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<u>VIOLATION</u>	<u>CIRCUMSTANCE</u>	<u>ENFORCEMENT RESPONSES</u>	<u>PERSONNEL</u>					
			<u>ET</u>	<u>SET</u>	<u>RCE</u>	<u>RCBH</u>	<u>EQC</u>	<u>ENV DIR</u>
GENERAL VIOLATIONS								
General violations of the sewer use ordinance restrictions	Single violation	Initial enforcement:						
		Telephone call or in-person meeting	x	x	x	x		
		WDN	x					
		Letter of Warning					x	
		Administrative Enforcement:						
		NOV					x	
	Recurring violation or violation of schedule in enforcement order	Administrative Enforcement:						
		NOV					x	
		NOO (SCO/C&DO/penalties and fines)						x
		IWDP suspension						x
		IWDP revoked						x
		Judicial Proceedings						x